REMARKS

In the Office Action mailed August 13, 2007, the Examiner rejected claims 25-42. Claims 25-45 are currently pending in the present application. Claims 25, 35 and 42 have been amended. Applicant has traversed and/or rendered the rejections to the pending claims moot.

Rejection under 35 USC §103

Claims 25-31 and 33-42 have been rejected under 35 USC §103(a) as being obvious based upon DE 42 03 173, to Buchholz and in view of JP 63-45229, hereinafter referred to as JP229) and with respect to claim 32 further in view of US Patent No. 5,896,958, to Ludke et al. Applicant respectfully disagrees. Below, Applicant has reproduced Figures 1 and 2 of the present application showing the abutment plate mounted to an interior portion of the shield plate.

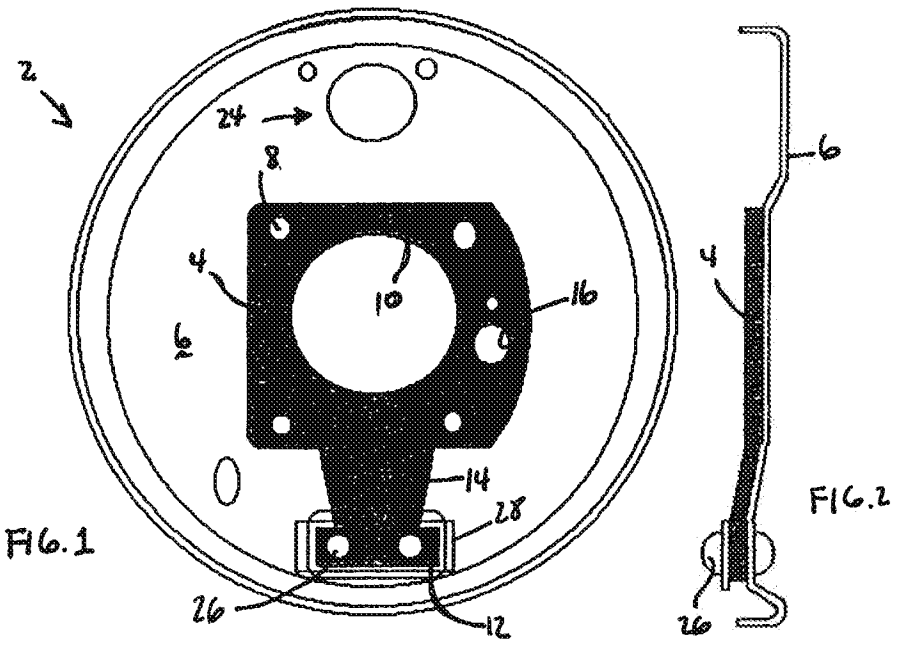


FIG.1 FIG.2

Present Invention

Location of the abutment plate, as claimed

With respect to claims 25 and claim 35 and 42, Applicant first note that these claims recite "an abutment plate attached to the shield plate and located on an interior portion of the shield plate" or "an abutment plate attached to the central portion of the shield plate and located on a side of the central portion in which the circumferal lip extends". For clarification, Applicant has further amended claims 25, 35 and 42 to recite that the abutment plate is mounted on an interior portion of the shield plate. The Office Action asserts that Bucholz et al. teaches "an abutment plate 4 attached to the shield plate and located on an interior portion of the shield plate". Applicant has reproduced FIGS. 1-5 of Bucholz et al., below.

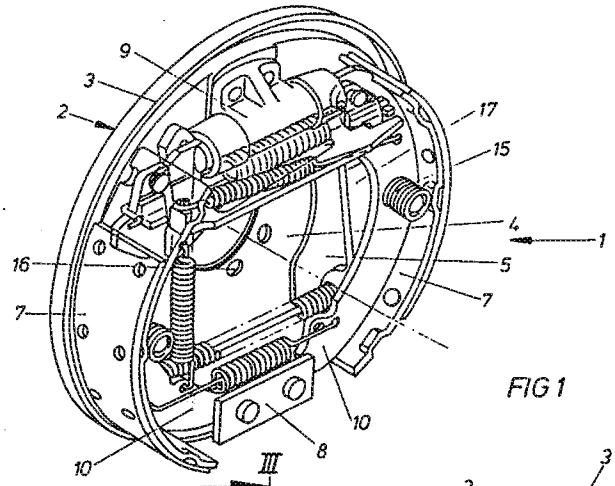


FIG 1

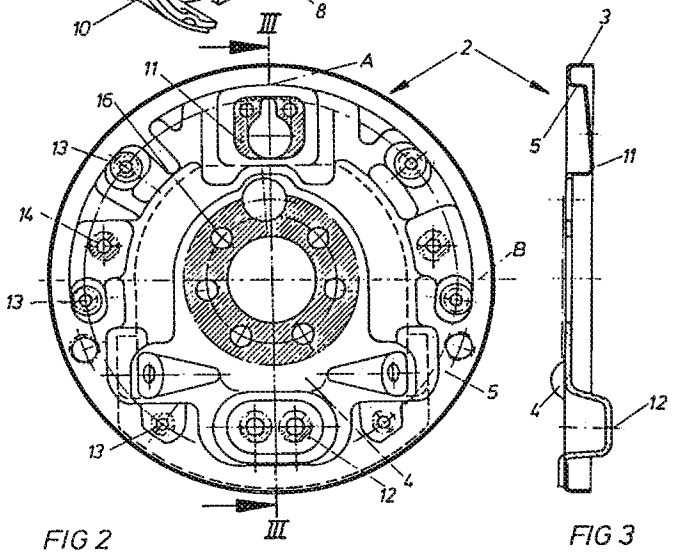


FIG 2 FIG 3

Bucholz et al.

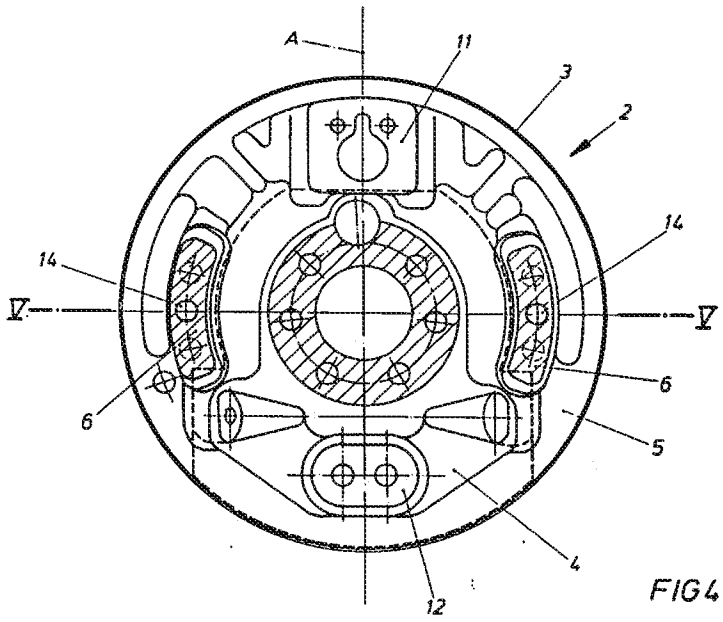


FIG 4

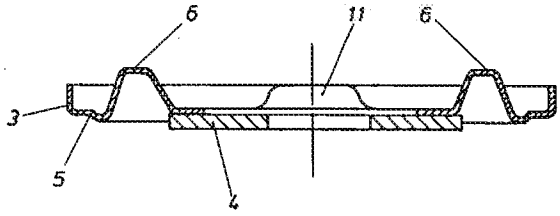


FIG 5

Bucholz et al.

Applicant notes, that the first and second embodiments of Bucholz et al., Figs. 1-3 and 4-5, respectively, clearly show that the abutment plate (4) is located on the exterior portion of the shield plate (e.g. between the shield plate and a wheel hub (not shown)), which is opposite to where the components of the brake assembly of the present invention are located.

For example, with reference to the first embodiment, FIG. 1 shows that the abutment plate (4) is located on the outside of (e.g. located behind) the shield plate (5) as evidenced by the material thickness of the shield plate. With reference to FIGS. 2 and 3, the abutment plate (4) is located on the outside of the abutment plate (4), as particularly shown in the bottom of FIG. 2 wherein the abutment plate (4) is located to

the left of the shield plate. Further, FIG. 2 shows the outer circumference portion of the abutment plate (4) in dashed lines indicating a portion of the abutment plate (4) being hidden behind the shield plate (5). For the Examiner's reference, Applicant has provided indication showing the outer circumference of abutment plate (4).

With reference to the second embodiment shown in Figs. 4 and 5, again the abutment plate (4) is located on the outside of the shield plate (5). Applicant has again provided indication showing the outer circumference of abutment plate (4) in Fig. 4.

Bucholz et al. also provides support for the abutment plate (4) being located on the outside of the shield plate (5), e.g. between the shield plate (5) and wheel carrier (underlining added).

> The usually one-piece trained brake girder sheet metal of the drum brake is built up according to invention from at least two plates of different material thickness, from an internal first plate with a larger material thickness, fastenable at the wheel carrier, and an outside second plate of smaller material thickness, which carry for the brake drum along its outer circumference toward pointing circulating usual collars, whereby supporting organs are fastened to the material-moderately stronger first plate preferably, e.g. in form of a clevis mounting o. ae. for the tangential forces of the brake shoes. Machine translation of Bucholz et al., p. 1, lines 28-35.

This rough translation was derived through an online machine translation service http://babelfish.altavista.com, based upon the text of the application provided through http://ep.espacenet.com, and is provided as Exhibit A.

In view of the foregoing, Bulcholz et al. teaches the abutment plate (4) located on the opposite side of the shield plate (5) than that of the present invention, as recited in claims 25, 35 and 42. Independent claim 25 recites "an abutment plate attached to the shield plate and located on an interior portion of the shield plate", and independent claim 35 and 42, recite "an abutment plate attached to the central portion of the shield plate and located on a side of the central portion in which the circumferal lip extends". Accordingly, Bucholz et al. fails to teach this feature.

As demonstrated above, in contrast to the Office Action, Bucholz et al. fails to teach an abutment plate attached to the shield plate and located on an interior portion

of the shield plate. Also, there has been no suggestion of moving the abutment plate (4) of Bucholz et al. to the interior portion of shield plate (5). Further, should the modification be asserted, Applicant points out that it would not be possible as the there would be interference with mounting structures (6) and (11) of the shield plate as the hidden portions shown in Figs. 2 and 4 show the outer circumference of the abutment plate (4) extending well beyond these mounting structures. In view of the foregoing, including the claim amendments to recited that the abutment place is mounted to the interior of the shield plate, Applicant has traversed and/or rendered the rejections to claims 25, 35 and 42 (and their dependents) moot.

Lower Portion of the Abutment Plate

With respect to claims 25, 35 and 42, these claims recite that the abutment plate includes "a lower portion having a shape generally corresponding to an anchor block of the drum brake assembly and configured to engage and resist braking forces from brake shoes." Claims 26 and 42 further recite that "the width of the intermediate portion and the lower portion is less than the width of the upper portion". The Examiner asserts that "a lower portion having a shape generally corresponding to an anchor block of the drum brake assembly and configured to engage and resist braking forces from brake shoes" is taught by Bucholz et al. The Examiner further asserts that "the width of the intermediate portion and the lower portion is less than the width of the upper portion" cannot be considered for patentability since "the shape of the abutment plate [is] considered to be engineering design choices and would depend on the requirements of each application to dampen the required vibration and noise".

With respect to "a lower portion having a shape generally corresponding to an anchor block of the drum brake assembly and configured to engage and resist braking forces from brake shoes", Applicant points out that Bucholz et al. fails to teach this feature. As described above, the outer circumference of the anchor block (4) referenced by the Examiner extends well beyond an anchor block portion. Accordingly, the lower portion of the anchor block (4) does not include a shape generally corresponding to an anchor block, but instead, a shape that extends well beyond an anchor block.

Notwithstanding, Applicant has amended claims 25, 35 and 42 to clarify that the lower portion is shaped to generally correspond to an anchor block.

With respect to the "width of the intermediate portion and the lower portion being less than the width of the upper portion", the Examiner asserts that changes in size/proportion and changes in shape cannot be given patentable weight. Applicant first points out that it is impermissible to use per se rules in formulating rejections. *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 77 F.3d 422, 37 USPQ2d 1663 (Fed. Cir. 1996) require:

> The use of *per se* rules is improper in applying the test for obviousness under 35 U.S.C. 103. Rather, 35 U.S.C. 103 requires a highly fact-dependent analysis involving taking the claimed subject matter as a whole and comparing it to the prior art.

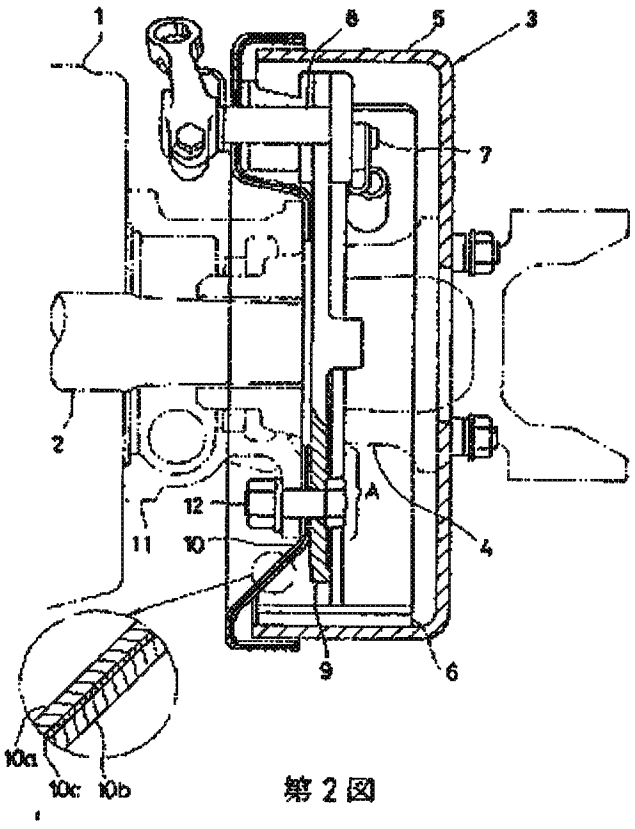
Notwithstanding, with respect to changes in shape, *In re Dailey*, 149 USPQ 47 (CCPA 1966) held that:

> Applicants have presented no argument which convinces us that the particular configuration of their container is significant or is any thing more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing mating surfaces in the collapsed container of Matzen. See *Grahm v. John Deere CO.*, 383 U.S. 1, 148 USPQ 459. *Id.* at 50 (underlining added).

In contrast to the facts of *In re Dailey*, pending claims 25, 35 and 42 are directed towards a particular configuration that provides significant advantageous over the prior art in reducing both vibration and weight of the brake assembly, which is absent from the prior art currently cited. This weight reduction and vibration dampening is supported throughout the Specification, such as in paragraphs 0001, 0003, 0010, 0023 and particularly in paragraph 0008.

With reference to Bucholz et al., this reference not only fails to realize vibration dampening, but also appears to give no consideration to weight reduction as the

abutment plate asserted by the Examiner appears to extend through a majority surface area of the shield plate (5). Further, JP 229 also appears to extend through a majority surface area of the shield, as shown below.



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Neither Bucholz et al. or JP 229 teach or suggest the configuration of the lower portion of the abutment plate; nor do they appear to contemplate the 'significant' weight reduction achieved through the configuration of the abutment plate. In view of the ability to reduce vibration and weight of the braking system, as claimed, and the lack of teaching of such combination within the prior art, Applicant asserts that claims 25, 35 and 42 are not merely a modification in shape, but instead includes significant change which provides beneficial results over the prior art. For this reason, the application of *In re Dailey* has been rebutted.

In view of the foregoing, Applicants have again traversed the rejections to claims 25, 35 and 42 as the prior art fails to include "a lower portion having a shape generally corresponding to an anchor block of the drum brake assembly and configured to

engage and resist braking forces from brake shoes" and "the width of the intermediate portion and the lower portion is less than the width of the upper portion".

CONCLUSIONS

In view of Applicant amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

Dated: Nov 13, 2007

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